ESTTA Tracking number:

ESTTA390768 01/28/2011

Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189023
Party	Plaintiff Whataburger Partnership
Correspondence Address	Christopher Kelly Wiley Rein LLP 1776 K St NW Washington, DC 20006 UNITED STATES ckelly@wileyrein.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Jennifer L. Elgin
Filer's e-mail	jelgin@wileyrein.com, bcarlton@wileyrein.com
Signature	/JLE/
Date	01/28/2011
Attachments	Notices_of_Reliance-7.pdf (12 pages)(596912 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WHATABURGER PARTNERSHIP)			
)			
Opposer,)			
)	Opp. No.:	91/189,023	
V.)	Ser. No.:	77/494,179	
)	Mark:	WHATTA	WING!
SARKIS AVAKIAN,)			
)			
Applicant.)			

Opposer's Seventh Notice of Reliance

Pursuant to Rule 2.120(j) of the Trademark Rules of Practice, 37 C.F.R. §
2.120(j), Opposer WHATABURGER PARTNERSHIP, hereby gives notice of its
reliance upon "Applicant's Objections and Responses to Opposer's First Set of Requests
for Admission to Applicant", as follows:

Request No.	Relevance
6	Admitting WHATA and WHATTA are phonetically identical – relevant to comparison of marks
12	Admitting that Applicant sells hamburgers and cheeseburgers under opposed mark – relevant to relatedness of goods and services
17	Admitting that Applicant has disclaimed "wing" apart from the mark as shown in the opposed application – relevant to comparison of marks
18	Admitting that Applicant sells chicken wings, chicken tenders and chicken sandwiches under opposed mark – relevant to relatedness of goods and services
25	Admitting that opposed application contains not limitations as to channels of trade – relevant to channels of trade
31	Admitting that Applicant operates a single restaurant under opposed mark – relevant to opportunity for actual confusion
37	Admitting that Applicant intends to expand its restaurant concept – relevant to likelihood of eventual confusion
38	Admitting that Applicant advertises its services over the internet – relevant to channels of trade

Request No.	Relevance
39	Admitting that Opposer advertises its services over the internet – relevant to channels of trade

These responses (redacted) are attached as Exhibit G hereto.

Respectfully submitted,

WHATABURGER PARTNERSHIP

By:

Christopher Kelly Jennifer L. Elgin Wiley Rein LLP 1776 K Street, N.W. Washington, D.C. 20006 (202) 719-7000

Attorneys for Whataburger Partnership

Dated: January 28, 2011

EXHIBIT G

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

WHATABURGER PARTNERSHIP)	Opposition No. 91189023
Opposer,)	
ν .)	Serial No. 77/494179 Mark: Whatta Wing!
SARKIS AVAKIAN,)	Č
Applicant.))	

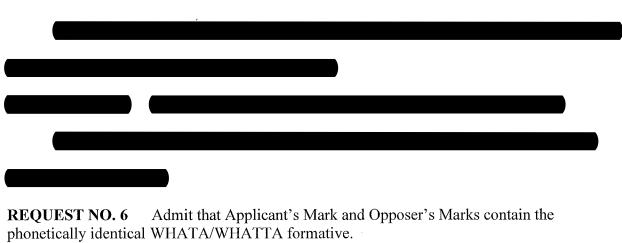
APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Applicant Sarkis Avakian d/b/a Whatta Wing! ("Applicant" or "Whatta Wing!") hereby responds to the First Set of Requests for Admission served by Whataburger Partnership ("Opposer" or "Whataburger").

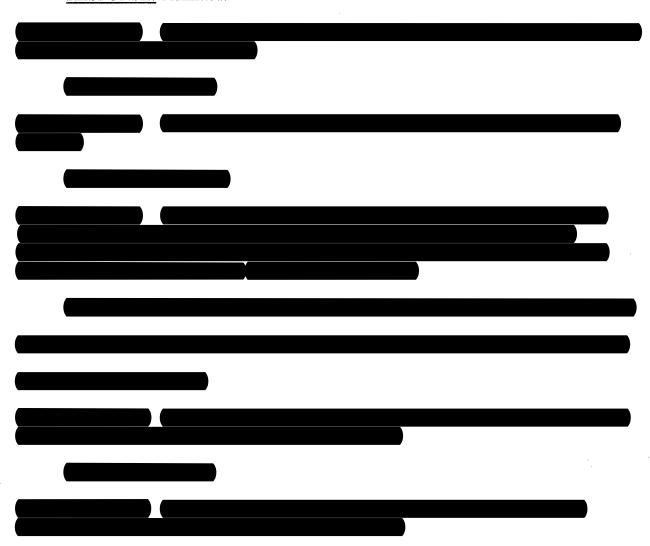
GENERAL OBJECTIONS

The following General Objections apply to and are incorporated by reference in each and every response to Opposer's Requests For Admission.

- 1. Applicant objects to the Opposer's Requests and "Definitions" and "Instructions" to the extent they attempt to impose any obligations different from or in addition to those obligations imposed by the Federal Rules of Civil Procedure or the Rules of the Trademark Trial and Appeal Board.
- 2. Applicant objects to each Request to the extent it is premature in that fact discovery is ongoing, and expert discovery has not yet commenced.

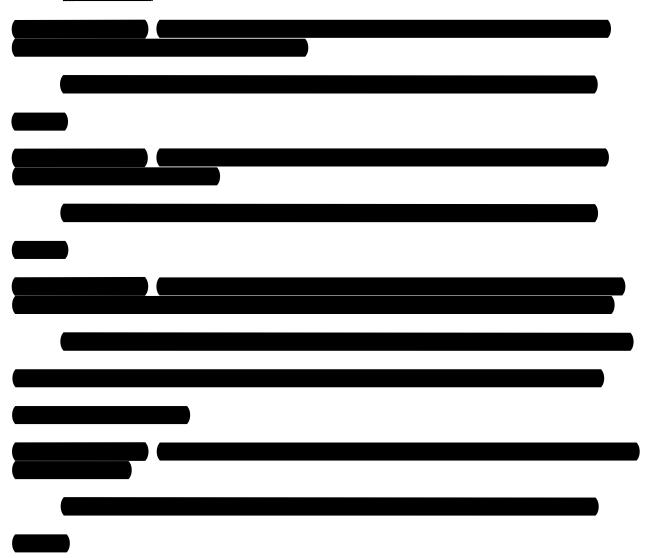


RESPONSE: Admitted.



REQUEST NO. 12 Admit that Applicant's menu items sold under Applicant's mark include hamburgers and cheeseburgers.

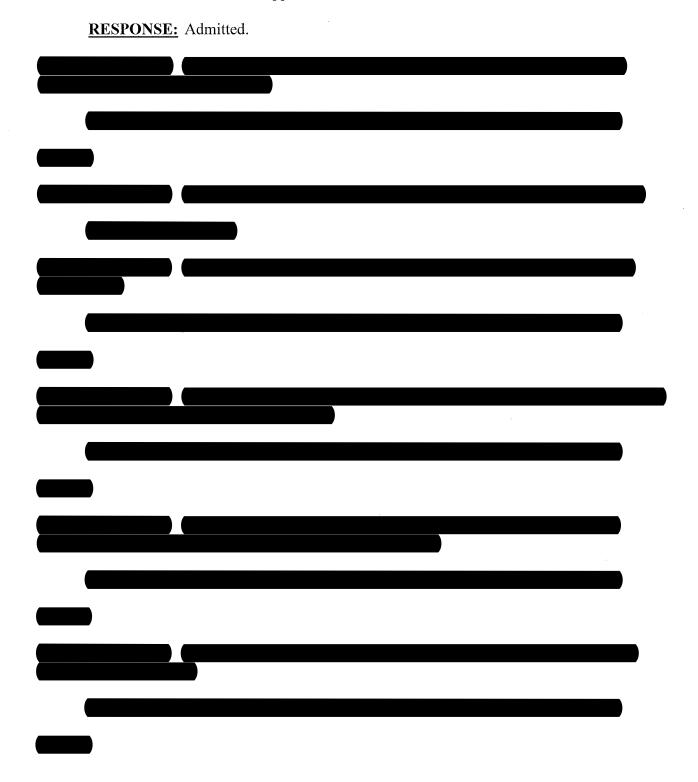
RESPONSE: Admitted.



REQUEST NO. 17 Admit that Applicant has disclaimed the term "wing" apart from the mark as shown in U.S. Applicant Ser. No. 77/494,179.

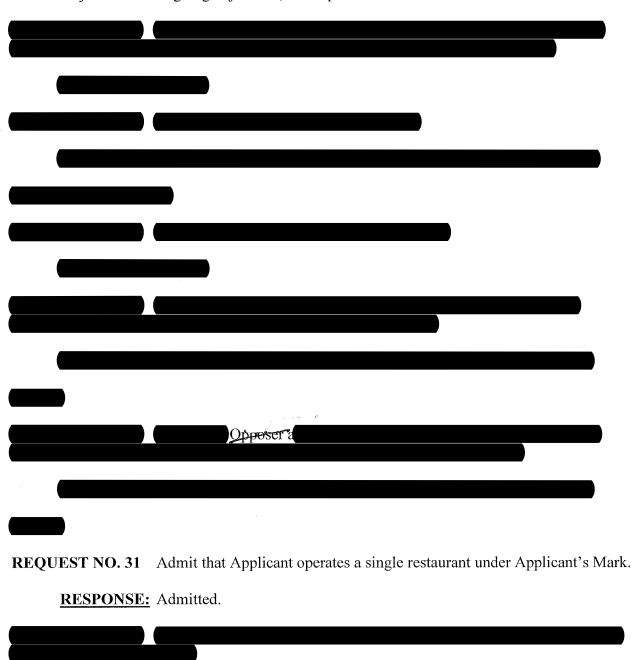
RESPONSE: Admitted.

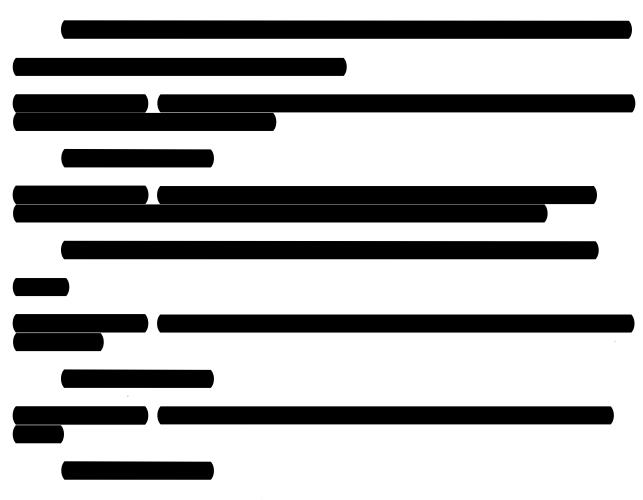
REQUEST NO. 18 Admit that Applicant sells chicken wings, chicken tenders and chicken sandwiches in its restaurant under Applicant's Mark.



REQUEST NO. 25 Admit that the recitation of services in opposed application Ser. No. 77/494,179 contains no limitations regarding the manner of or channels of trade through which Applicant's services are sold.

RESPONSE: Applicant objects on the grounds that the referenced document speaks for itself. Subject to the foregoing objections, the request is admitted.





REQUEST NO. 37 Admit that Applicant intends to expand its restaurant concept through new owner-owned stores or franchised stores.

RESPONSE: Admitted.

REQUEST NO. 38 Admit that Applicant advertises its restaurant services on the internet.

RESPONSE: Admitted.

REQUEST NO. 39 Admit that Opposer advertises its restaurant services through the internet.

RESPONSE: Admitted.



Respectfully submitted,

SARKIS AVAKIAN

By his Attorneys,

Dated: August 28, 2009

/s/ Sheryl Koval Garko
Mark S. Puzella
Robert M. O'Connell, Jr.
Chelsea Teachout
Sheryl Koval Garko
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109-2881

Tel: 617/570-1000 Fax: 617/523-1231

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION upon Opposer's counsel of record by depositing one copy thereof in a sealed envelope in the United States mail, first-class, postage prepaid, on August 28, 2009, addressed as follows:

Christopher Kelly Wiley Rein LLP 1776 K Street NW Washington, DC 20006

/s/ Sheryl Koval Garko
Sheryl Koval Garko

CERTIFICATE OF SERVICE

I hereby certify that a copy of OPPOSER'S FIRST NOTICE OF RELIANCE, OPPOSER'S SECOND NOTICE OF RELIANCE, OPPOSER'S THIRD NOTICE OF RELIANCE, OPPOSER'S FIFTH NOTICE OF RELIANCE, OPPOSER'S FIFTH NOTICE OF RELIANCE, OPPOSER'S SIXTH NOTICE OF RELIANCE and OPPOSER'S SEVENTH NOTICE OF RELIANCE by causing a copy thereof to be sent via electronic mail to the following address:

Sheryl Koval Garko GOODWIN PROCTER, LLP Exchange Place 53 State Street Boston, MA 02109-2881 sgarko@goodwinproctor.com

This 28th day of January 2011.

Jennifer L. Elgin